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Applicant(s): **ANDREW SCOTT LUCHENE**

Docket No.

98-024

Serial No.  
09/107,971

JUL 14 2003  
U.S. PATENT & TRADEMARK OFFICE

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June 30, 1998

Examiner  
John L. Young

Group Art Unit  
8622  
D. L. Luchene

Invention: **METHOD AND APPARATUS FOR FACILITATING THE PLAY OF FRACTIONAL LOTTERY TICKETS UTILIZING POINT-OF-SALE TERMINALS**

17 Appeal  
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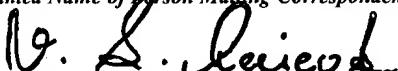
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*PATENT APPEAL*  
Technology Center 3600

Application No. 09/107,971  
Attorney Docket No.: 98-024

#17

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants: Andrew S. Van Luchene

Application No.: 09/107,971

Filed: June 30, 1998

For: METHOD AND APPARATUS FOR  
FACILITATING THE PLAY OF  
FRACTIONAL LOTTERY TICKETS  
UTILIZING POINT-OF-SALE  
TERMINALS

) Group Art Unit: 362  
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**BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Mail Stop: Appeal Brief  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Dear Examiner:

Appellants hereby appeal to the Board of Patent Appeals and Interferences from the decision of the Examiner in the Final Office Action mailed July 10, 2002 (Paper No. 13), rejecting claims 1 - 27.

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**APPENDIX A: CLEAN COPY OF CLAIMS INVOLVED IN THE APPEAL**

**APPENDIX B: CHART SHOWING CLAIM DEPENDENCIES**

## REAL PARTY IN INTEREST

The present application is assigned to Walker Digital, LLC, 1177 High Ridge Road, Stamford, CT 06905.

## RELATED APPEALS AND INTERFERENCES

Appellants are aware of the following appeal, which might be considered to directly affect, be directly affected by or have a bearing on the Board's decision in the pending appeal:

Serial No. 09/045,036, filed March 20, 1998, entitled "SYSTEM AND METHOD FOR FACILITATING THE PLAY OF FRACTIONAL LOTTERY TICKETS USING POINT-OF-SALE TERMINALS".

The present application is a continuation-in-part of the above application. Further, although the claims of the two applications are patentably distinct, both appeals involve the same examiner, the same references, and the same general interpretations of the references as applied to several claims.

## STATUS OF CLAIMS

Claims 1 - 27 are pending in the present application and are being appealed.

Claims **1 – 15 and 20 - 25** stand rejected under 35 U.S.C. § 103(a) as being unpatentable over a combination of:

- U.S. Patent No. 5,548,110 to Storch;
- U.S. Patent No. 5,772,510 to Roberts; and
- "Heads I Win, Tails You Lose", The Economist, June 13, 1992, ("The Economist");

Claims **16 – 18 and 26 - 27** stand rejected under 35 U.S.C. § 103(a) as being unpatentable over a combination of Storch, Roberts and U.S. Patent No. 5,083,784 to Nilssen.

Claim 19 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over a combination of Storch, Roberts, The Economist, and Nilssen.

## STATUS OF AMENDMENTS

No amendments were filed subsequent to final rejection.

## SUMMARY OF INVENTION

Generally, according to one aspect of the invention, a computing device such as a store controller determines a monetary value, such as an amount of spare change due to a customer. The store controller also selects a ticket record that includes a set of ticket numbers. Present Application, page 4, lines 16 – 18. The ticket record may be, e.g., a database record which defines a set of lottery ticket numbers that are included on one or more fractional lottery tickets. Present Application, page 11, lines 7 – 9.

Subsequently, the store controller purchases at least one lottery ticket based on the monetary value and the set of ticket numbers. Present Application, page 4, lines 18 – 19.

The store controller then outputs the information to a POS terminal, which prints a fractional lottery ticket redeemable for a portion of the lottery ticket's prize. The fractional lottery ticket includes the ticket numbers and a fractional lottery ticket value that is based on the monetary value. Present Application, page 4, lines 19 – 22. The fractional lottery ticket value may be, for example, equal to the monetary value, or may be the monetary value rounded to the nearest nickel. Present Application, page 4, line 22 – Page 5, line 2. For example, for \$0.26 in change, a customer may be sold a 26% share of a \$1 lottery ticket in lieu of the change due. Present Application, page 3, lines 14 – 16.

After a drawing date for the lottery ticket, the customer redeems the fractional lottery ticket, typically at a POS terminal, if a prize is due. The POS terminal communicates with the

store controller, which receives the ticket numbers and the fractional lottery ticket value therefrom. From the received information, the store controller may determine a prize value of the corresponding lottery ticket. The customer is, in turn, provided with a portion of the prize value based on the fractional lottery ticket value. Present Application, page 5, lines 3 – 8. For example, with a 26% share of a \$1 lottery ticket, if the lottery ticket wins, 26% of the corresponding prize is awarded to the customer. Present Application, page 3, lines 14 – 16.

## ISSUES

Whether claims **1 – 15 and 20 - 25** are unpatentable under 35 U.S.C. § 103(a) as being obvious in light of a combination of Storch, Roberts, and The Economist.

Whether claims **16 – 18 and 26 - 27** are unpatentable under 35 U.S.C. § 103(a) as being obvious in light of a combination of Storch, Roberts and Nilssen.

Whether claim **19** is unpatentable under 35 U.S.C. § 103(a) as being obvious in light of a combination of Storch, Roberts, The Economist and Nilssen.

## GROUPING OF CLAIMS

The claims in different groups do not stand and fall together.

Appellants group the pending claims as follows:

Group I - claims **1, 3, 4, 5, 6, 20, 21**;

Group II - claim **2**;

Group III - claims **7 and 8**;

Group IV - claims **9**;

Group V - claims **10**;

Group VI - claims **11, 12, 13, 22, 23**;

Group VII - claim **14**;

Group VIII - claim **15, 24, 25**;

Group IX - claims **16, 17, 18, 19, 26, 27**.

Appellants believe that claims in different groups are separately patentable, as explained below.

## ARGUMENT

As explained below, the Examiner's rejection of the claims is improper at least because the Examiner has failed to set forth the required *prima facie* case of unpatentability of any claim. The Examiner has not shown all limitations of any claim to be disclosed or suggested by the references of record, alone or in combination. Further, various rejections are based on improper combinations and modifications of the references without adequate motivation in the prior art for making the proposed combinations and modifications.

Moreover, regardless of the failure to present a *prima facie* case, the cited references, whether alone or in any combination, cannot be interpreted in a manner that would render any pending claim obvious.

Accordingly, the rejections are inappropriate and Appellants respectfully request that the Examiner's rejections be reversed.

In the arguments herein, limitations of the claims are indicated in *italics*, and the references of record are indicated by underlining.

In separate arguments of patentability of different Groups, Appellants have, where possible, referred to prior arguments to avoid undue repetition.

### The References

The Examiner has relied on a combination of references in the rejection of all claims. However, the references cited by the Examiner, either alone or in combination, do not disclose or suggest all of the limitations of any claim.

Discussed immediately below are the references used in rejecting the appealed claims: Storch, Roberts, The Economist and Nilssen.

#### **The Storch patent**

In summary, Storch discloses optimal coding, particularly for bar codes, in which errors may be detected and / or corrected, and in which information may be encoded more compactly and more reliably. Col. 4, lines 26 - 33. Storch also discloses methods and apparatus for

obtaining, coding and processing information, particularly with respect to bar codes. Col. 4, lines 38 - 41. The general coding methodology of Storch is to employ information coded in binary arithmetic. Col. 4, lines 34 - 36. The methodology also allows for error detection and correction. Col. 4, lines 44 - 47. Storch also purports to improve the coding, transfer, processing and / or storage of information, as well as the reliability thereof. Col. 3, line 66 – Col. 4, line 2.

Storch also purports to improve counterfeit detection and / or deterrence. Col. 4, lines 10 – 11. Storch asserts that the disclosed system is applicable to counterfeitable products, such as lottery tickets. Col. 4, lines 58 - 61. Enhanced bar code formats disclosed by Storch are designed for lottery tickets. Col. 67, lines 11 - 16; Col. 72, lines 26 - 27; FIG. 22. Security ID numbers are already printed on instant winning lottery tickets. Col. 66, lines 32 - 34. Bar codes on such tickets would allow all winning tickets to be validated. Col. 66, lines 46 - 52.

### **The Roberts patent**

In summary, Roberts describes a lottery ticket with a blank region, to have printed thereon information necessary to complete the ticket. Abstract, lines 1 - 3; Col. 2, lines 3 - 6. Such necessary information includes 'play data', which determines the win/lose outcome of the ticket. Abstract, lines 3 - 5; Col. 2, lines 6 - 8. More particularly, the 'play data' which is printed in the blank region can be a 'lucky' number. Col. 4, lines 29 - 34. The information necessary to complete the ticket may be in both a bar code format and a human readable format. Col. 4, lines 10 - 18; FIG. 2B.

With such an arrangement, completed lottery tickets are not stored prior to purchase; only during purchase is the non-completed lottery ticket printed with information necessary to provide the purchaser with a completed lottery ticket. Col. 2, lines 25 - 29. This way, if non-completed tickets are stolen, the thief will not be in possession of completed lottery tickets. Col. 2, lines 29 - 31.

### **The Economist publication**

The Economist is a paragraph that briefly recounts a method to eliminate change in transactions. A shopper randomly chooses a number from 1 to 100, and the cash register does the same. Lines 3 - 5. The two numbers are added together. Lines 5 - 6. Based on this sum, the

price is either rounded up or down. Lines 6 - 9. The laws of probability ensure that both parties will get a fair deal in the long run. Lines 9 - 10.

### **The Nilssen patent**

In summary, Nilssen describes a system in which a central entity issues lottery tickets in exchange for sums of money, and the money is used for generating earnings, such as interest or dividends from investments. Abstract. Ticket holders may participate in lottery drawings for the earnings for a preceding period. Abstract. As a result, each lottery ticket is in effect everlasting, participating in lottery drawings on a periodic basis, such as once each week, for an indefinitely long duration. Abstract.

### **Other Subject Matter Without Support in the Record is not Substantial Evidence**

Appellants have already disputed all of the various assertions in the First Office Action regarding what is 'well known' but lacked evidence of such subject matter in the record.

Applicants Response mailed April 3, 2002, page 4, paragraph 1.

Appellants note that the scope of the matter of which the Examiner takes Official Notice is limited to the substantial evidence in the record for such matter. The references of record do not support the Examiner's broad assertions as to what was well known. At best, the prior art of record shows that only a very limited form of the asserted matter was known.

Accordingly, the Examiner's sweeping assertions which are not supported by the references of record lack substantial evidence, and therefore cannot be used as prior art to the present application. Only the content of the references of record which are prior art to the present application may so used. "[D]eficiencies of the cited references cannot be remedied by the Board's general conclusions about what is 'basic knowledge' or 'common sense.'" In re Zurko, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001); In re Lee, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002).

Further, to the extent such extra-record assertions might be deemed official notice, officially-noted subject matter cannot be used as the **basis** for a rejection under Sections 102 or 103. Official Notice may be used, if at all, only to clarify the meaning of a reference. See, e.g., In re Ahlert, 424 F.2d 1088 (C.C.P.A. 1969) ("Typically, it is found necessary to take notice of

facts which may be used to supplement or **clarify the teaching of a reference disclosure**, perhaps to justify or explain a particular inference to be drawn from **the reference teaching**." (emphasis added).

In other words, official notice of what existed in the prior art is not permitted. A reference must be provided to show the scope and content of the prior art. See, e.g., In re Ahlert, 424 F.2d 1088 (C.C.P.A. 1969) ("Assertions of technical facts in areas of esoteric technology **must always be supported by citation to some reference** work recognized as standard in the pertinent art and the appellant given, in the Patent Office, the opportunity to challenge the correctness of the assertion or the notoriety or repute of the cited reference. ... Allegations concerning specific 'knowledge' of the prior art, which might be peculiar to a particular art should also be supported and the appellant similarly given the opportunity to make a challenge.") (emphasis added); In re Eynde, 480 F.2d 1364 (C.C.P.A. 1973) ("[W]e reject the notion that judicial or administrative notice may be taken of the state of the art. Facts constituting the state of the art in a patent case are normally subject to the possibility of rational disagreement among reasonable men, and **are not amenable to the taking of judicial or administrative notice**.") (emphasis added); In re Pardo, 684 F.2d 912 (C.C.P.A. 1982) ("[T]his court will always **construe [the rule permitting judicial notice] narrowly** and will regard facts found in such manner with an eye toward narrowing the scope of any conclusions to be drawn therefrom. Assertions of technical facts in areas of esoteric technology **must always be supported by citation to some reference work** recognized as standard in the pertinent art") (emphasis added)

## 1. Group I

Group I includes independent claims **1, 20 and 21** and dependent claims **3, 4, 5 and 6**.

As discussed below, the rejection of the claims of Group I is flawed because the Examiner has not made a *prima facie* case of unpatentability of any claim of Group I. The Examiner has not shown all limitations of any claim to be disclosed or suggested by the references. The rejection is also based on improper combinations and modifications of the references without adequate motivation in the prior art for making the proposed combinations and modifications.

Further, no claim of Group I can be deemed obvious in light of the references of record, alone or in any combination, because the cited references, alone or in any combination, cannot be interpreted in a manner that would disclose or suggest the limitations of any pending claim. Further, the prior art of record does not contain any proper motivation to combine or modify the references in any way which renders any claim of Group I obvious.

### 1.1. Independent Claims 1, 20 and 21

Independent claim **1** is directed to a method for facilitating the purchase of fractional lottery tickets using a point-of-sale terminal. The method comprises determining a monetary value, and selecting a ticket record that includes a set of ticket numbers.

At least one lottery ticket is purchased based on the monetary value and the set of ticket numbers after the step of selecting. The ticket numbers and a fractional lottery ticket value that is based on the monetary value are output.

Independent claim **20** is directed to an apparatus, and includes a processor operative to perform steps substantially as described above with respect to method claim **1**.

Independent claim **21** is directed to a computer readable medium encoded with processing instructions for implementing a method substantially as described above with respect to method claim **1**.

For brevity, the discussion below refers to method claim **1**, but the arguments are likewise applicable to claims **3, 4, 5, 6, 20 and 21**.

*Group I*

## 1.2. Advantages of Independent Claim 1

The embodiment of claim 1 provides several advantages not even recognized, much less disclosed or suggested, by the prior art of record, either alone or in combination. These advantages render the claimed subject matter nonobvious over the cited art.

As discussed in the present application, by *purchasing at least one lottery ticket based on the monetary value and the set of ticket numbers*, an appropriate lottery ticket can be purchased. Such a ticket may be, e.g., one that itself includes the desired set of ticket numbers. Such a ticket may be, e.g., one or more tickets worth at least the monetary value.

By *purchasing at least one lottery ticket based on the monetary value and the set of ticket numbers after the step of selecting [a ticket record that includes a set of ticket numbers]*, an appropriate lottery ticket can be purchased after ticket numbers have been selected. Thus, an appropriate lottery ticket can be purchased, e.g., once a fractional lottery ticket with those numbers has been sold to a customer.

By *outputting the ticket numbers and a fractional lottery ticket value that is based on the monetary value*, a 'fractional' lottery ticket may be created and provided, e.g., to a customer. For example, for \$0.26, the customer may be sold a 26% share of a \$1 lottery ticket. For \$0.26 in change, a customer may be sold a 26% share of a \$1 lottery ticket in lieu of the change due.

Present Application, page 3, lines 14 – 16.

Thus, for example, a purchaser need not be constrained to purchase lottery tickets in only multiples of full denominations (e.g., only in multiples of \$1 for \$1 tickets). This affords the purchaser more flexibility, and allows merchants to sell such fractional lottery tickets at many, differing prices and in a greater variety of ways.

A great many more advantageous and diverse uses of the claimed invention, both explicit and implicit in the present Application, are possible and would be apparent to those of skill in the art based on the Appellants' disclosure.

## 1.3. No Prima Facie Showing of Unpatentability of the Claims of Group I

A reading of the rejections of the claims of the Group reveals that the Examiner has consistently ignored or misinterpreted the limitations of the claims. Several limitations are not *Group I*

disclosed or suggested by the references of record. Accordingly, the Examiner has not presented a *prima facie* case of obviousness of any claim of the Group.

The Examiner bears the burden of establishing a *prima facie* case of obviousness based upon the prior art. In re Fritch, 972 F.2d 1260, 1265 (Fed. Cir. 1992). To reject claims in an application under section 103, an examiner must show an unrebutted *prima facie* case of obviousness. In re Rouffet, 149 F.3d 1350, 1355 (Fed. Cir. 1998). If examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent. In re Oetiker, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

The factual predicates underlying an obviousness determination include the scope and content of the prior art, the differences between the prior art and the claimed invention, and the level of ordinary skill in the art. In re Rouffet, 149 F.3d 1350, 1355 (Fed. Cir. 1998). The secondary considerations are also essential components of the obviousness determination. In re Rouffet, 149 F.3d 1350, 1355 (Fed. Cir. 1998).

In order to rely on a reference as a basis for rejection of the applicant's invention, the reference must either be in the field of the applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. In re Oetiker, 977 F.2d 1443, 1447 (Fed. Cir. 1992).

When a rejection is based on a combination of references, the Examiner can satisfy the *prima facie* burden only by showing some objective teaching leading to the purported combination of references. In re Fritch, 972 F.2d 1260, 1265 (Fed. Cir. 1992). Lacking a motivation to combine references, there is no *prima facie* case of obviousness. In re Rouffet, 149 F.3d 1350, 1358 (Fed. Cir. 1998).

Finally, during examination, claims are given their broadest reasonable interpretation consistent with the specification. In re Hyatt, 211 F.3d 1367 (Fed. Cir. 2000). The "PTO applies to verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant's specification." In re Morris, 127 F.3d 1048, 1054-55 (Fed. Cir. 1997).

*Group I*

**1.3.1. No showing that the references suggest *purchasing at least one lottery ticket based on the monetary value and the set of ticket numbers after the step of selecting [a ticket record that includes a set of ticket numbers]***

The Examiner has not shown that the references, alone or in combination, suggest *purchasing at least one lottery ticket based on the monetary value and the set of ticket numbers after the step of selecting [a ticket record that includes a set of ticket numbers]*. The closest the Examiner comes is a conclusory statement that Storch “shows elements that suggest” such a feature. Final Office Action, page 3, paragraph 2. In fact, Storch lacks any hint of such a feature.

The Examiner asserts on pages 3 – 4 of the Final Office Action (paper no. 13) that Storch “shows elements that suggest:

A method for facilitating the purchase of fractional lottery tickets using a point-of-sale terminal, comprising:

determining a monetary value;

selecting a ticket record that includes a set of ticket numbers;

purchasing at least one lottery ticket based on the monetary value and the set of ticket numbers after the step of selecting; and

outputting the ticket numbers and a fractional lottery ticket value that is based on the monetary value.”

(indentation not in original)

In other words, the Examiner has asserted that the entire method of claim 1 is “suggested” by elements of Storch. The Examiner simultaneously concedes that “Storch lacks an explicit recitation” of *outputting the ticket numbers and a fractional lottery ticket value that is based on the monetary value*. Final Office Action, page 4, paragraph 1. The Examiner also asserts that this limitation is “suggested” by Storch. Final Office Action, page 3, paragraph 2. Thus, it is apparent that the Examiner’s use of “suggest” does not mean “to explicitly recite”. Appellants therefore understand this to be concession that no limitations of claim 1 are disclosed by or inherent in Storch, but are instead merely “suggested” by Storch.

*Group I*

From the unclear use of the term “suggest”, and the lack of any explanation whatsoever, it is unclear what the Examiner believes that Storch does explicitly disclose. Nowhere else in any Office Action has the Examiner asserted what Storch does explicitly disclose.

Moreover, Appellants note that a reference only “suggests” a limitation when there is some showing in the references of record that the prior art would have provided a motivation to modify a reference to result in the “suggested” limitations. There is no showing, purported or otherwise, in any Office Action of facts in the record that would motivate one of ordinary skill in the art to make the proposed modification of Storch to yield what is “suggested” by Storch. The lack of any motivation to combine or modify is discussed below.

Despite the assertions in the Office Actions, Storch does not suggest *purchasing at least one lottery ticket based on the monetary value and the set of ticket numbers after the step of selecting [a ticket record that includes a set of ticket numbers]*. Simply put, in Storch there is no description of *purchasing at least one lottery ticket based on* anything, much less *based on the monetary value and the set of ticket numbers*, and much less performed after a *step of selecting [a ticket record that includes a set of ticket numbers]*.

As described above, Storch generally describes various schemes for encoding information in bar codes, including representing integer and / or fractional numerical information in bar codes. Col. 4, lines 17 - 25; Col. 42, lines 23 – 25; Col. 70, lines 50 – 54.

Regarding lottery tickets, Storch discloses generally that the bar codes of Storch may be used on lottery tickets, e.g., to detect fraud. Col. 4, lines 58 – 61; Col. 67, lines 11 - 16; Col. 66, lines 46 - 52.

The Examiner has cited several portions of Storch as suggesting various limitations of the pending claims. However, the Examiner does not at all indicate which portions of Storch suggest which claim limitations. The cited portions do not at all suggest the claimed limitations. In fact, no part of Storch suggests *purchasing at least one lottery ticket based on the monetary value and the set of ticket numbers after the step of selecting [a ticket record that includes a set of ticket numbers]*.

Applicants have categorized these cited portions of Storch as follows:

- (a) Bar Code Formats,
- (b) Lottery Ticket,
- (c) Processes for Reading Bar Codes, and

*Group I*

(d) Hardware Diagram:

(a) Bar Code Formats

FIG. 1; FIG. 2; FIG. 28; FIG. 31; FIG. 32; FIG. 34; Col. 6, lines 26 – 48; Col. 8, lines 17 – 40; and Col. 70, lines 50 – 64.

Figures 1 and 2 illustrate bar code symbols coded in BCB to represent, respectively, ASCII characters and numerical information.

Fig. 28 illustrates a bi-directional code printed in the upper right and lower left quadrants of currency, which allows such codes to be read whether or not the currency is upside down.

Fig. 31 shows a general purpose BCB representation of a numerical message.

Fig. 32 shows a general purpose BCB representation of an alphanumeric message.

Fig. 34 shows an "AB switch" pattern in a bar code of a combination alphanumeric and numerical message.

Col. 6, lines 26 – 48 describe aspects of a coding feature, suitable for bar codes, which includes the use of end code elements and an even number of code elements between the end code elements.

Col. 8, lines 17 – 40 describe various types of information that may be stored by a bar code, including integer and fractional numerical information, signed numerical information, and two distinct portions of a message such as a numerator and a denominator.

Col. 70, lines 50 – 64 describes a format for encoding a positive or negative fraction in a bar code.

(b) Lottery Ticket

FIG. 22; and Col. 13, lines 27 – 30.

FIG. 22 and Col. 13, lines 27 – 30 describe a lottery ticket with repeated actual BCB bar code symbology.

(c) Processes for Reading Bar Codes

FIG. 24; FIG. 25; and Col 132, lines 33 – 50.

*Group I*

FIG. 24 is a flow chart of a method for detecting whether a bar code is BCB, and for detecting whether that BCB bar code has an error in it.

Fig. 25 is a flow chart illustrating a method for bar code error correction.

Col. 132, lines 33 – 50 describes a specific format of BCB coding for Random ID numbers, using currency as an example.

(d) Hardware Diagram

FIG. 29; FIG. 50.

FIG. 29 shows a system with a telephone incorporating an associated bar code reader. The telephone accesses a computer 306. The computer may establish an interactive system and provide audio prompts via the telephone to enter a serial number on currency and other objects, etc. The system may also provide audio confirmation and/or other information.

Fig. 50 shows a system including a computer which may be used to carry out the processing, storing, bar code and machine reading, signal encoding, bar code printing, and communicating with remote systems and terminals of Storch's system.

None of the cited Bar Code Formats, Lottery Ticket, Processes for Reading Bar Codes, or Hardware Diagram of Storch disclose or suggest:

*purchasing at least one lottery ticket based on anything,*  
much less

*based on the monetary value and the set of ticket numbers,*  
much less

*performed after a step of selecting [a ticket record that includes a set of ticket numbers].*

Thus, in summary, the Examiner has not shown that the references, alone or in combination, suggest *purchasing at least one lottery ticket based on the monetary value and the set of ticket numbers after the step of selecting [a ticket record that includes a set of ticket numbers]*.

*Group I*

**1.3.2. No showing that the references suggest *outputting the ticket numbers and a fractional lottery ticket value that is based on the monetary value***

The Examiner has not shown that the references, alone or in combination, suggest *outputting the ticket numbers and a fractional lottery ticket value that is based on the monetary value*. The closest the Examiner comes is a conclusory statement that Storch “shows elements that suggest” such a feature but “lacks an explicit recitation of” the feature, but Roberts “shows elements that suggest” such a feature. Final Office Action, page 4, paragraphs 1 – 3.

In fact, both Storch and Roberts lack any hint of such a feature.

The Examiner offers as evidence the following portions of Roberts: FIG. 2B, element 20b; Col. 4, lines 5 – 65; and Col. 6, lines 54 – 55.

FIG. 2B, element 20b of Roberts is ticket completion information printed on a ticket in human readable format. In FIG. 2B, it is represented as digits.

Col. 4, lines 5 – 65 of Roberts generally describes the printing of a lottery ticket, in particular the printing of additional information in addition to information pre-printed on the ticket. Subsequently, it may then be determined if the ticket has won.

Col. 6, lines 54 – 55 of Roberts states that ticket completion information necessary to provide a completed lottery ticket is the ticket completion information 20a (in bar code format) and 20b (in human readable format).

Simply put, whatever may be output in Roberts is not *a fractional lottery ticket value that is based on the monetary value*. For example, the ticket completion information (Fig. 2B, element 20b) in human readable format “identifies the terminal 14 along with the date and the time of day the ticket was processed.” Col. 4, lines 51 – 53. Thus, this ticket completion information clearly has nothing to do with *a fractional lottery ticket value*, much less *a fractional lottery ticket value that is based on the monetary value*.

Thus, in summary, the Examiner has not shown that the references, alone or in combination, suggest *outputting ... a portion identifier that identifies the allocated portion of the ticket*.

**1.3.3. No showing of a proper motivation to combine the references**  
*Group I*

The Examiner simply has not shown a motivation in the prior art of record to modify or combine the disparate references in the way suggested by the Examiner, or in any other manner that renders the claims obvious.

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. In re Fine, 5 USPQ2d 1596 (Fed. Cir. 1988); In re Jones, 21 USPQ2d 1941 (Fed. Cir. 1992). Furthermore, particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed. In re Kotzab, 217 F.3d 1365, 1371, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000).

A finding of obviousness requires that the art contain something to suggest the desirability of the proposed combination. In re Grabiak, 769 F.2d 729, 732 (Fed. Cir. 1985). In the absence of such a showing, there is inadequate support for the position that the proposed modification would *prima facie* have been obvious. Id. The absence of such a suggestion to combine is dispositive in an obviousness determination. Gambro Lundia AB v. Baxter Healthcare Corp., 110 F.3d 1573, 1579 (Fed. Cir. 1997).

When the art in question is relatively simple, the opportunity to judge by hindsight is particularly tempting. Consequently, the tests of whether to combine references need to be applied rigorously. McGinley v. Franklin Sports, Inc., 262 F.3d 1339, 1352 (Fed. Cir. 2001). In each case the factual inquiry whether to combine references must be thorough and searching. Id., at 1352 - 53.

The Examiner has provided two motivations to combine the Storch, Roberts and The Economist references.

First, it is asserted that one of ordinary skill in the art at the time the invention was made would have combined Roberts with Storch because “such combination would have provided means for ‘[sending] ... ticket completion information necessary to provide a completed lottery ticket ...’ (See Roberts (col. 6, ll. 54 – 55)).” Final Office Action, page 4, paragraph 3.

Second, it is asserted that one of ordinary skill in the art at the time the invention was made would have combined The Economist with Storch because “such combination would have *Group I*

provided means for 'determining a monetary value ...' (See The Economist (p. 1))." Final Office Action, page 5, paragraph 1.

Both motivations fail for three reasons:

- (a) neither motivation would actually have prompted one to make the proposed combination;
- (b) neither combination would in any way further the proposed motivation; and
- (c) neither combination has anything to do with the embodiment of claim 1, as discussed above in Sections 1.3.1 and 1.3.2.

With respect to reason (a), the first motivation, "providing a means for sending ticket completion information", would not cause one to seek out optimal encoding of information in bar codes, much less the particular method of Storch. Even if the bar codes on the tickets of Roberts were encoded using methods of Storch, this has nothing to do with sending "ticket completion information". At best it involves *what* the ticket completion information is: a particular kind of bar code.

Further with respect to reason (a), the second motivation, "providing a means for determining a monetary value", would not cause one to seek out optimal encoding of information in bar codes, much less the particular method of Storch. In fact, there is no way in which bar codes appear to fit with the system disclosed in The Economist.

It is worth noting that this purported 'motivation' of "providing a means for determining a monetary value" is used as the motivation in various rejections of different claim.

With respect to reason (b), the first combination (Storch and Roberts) does not further the proposed motivation of "providing a means for sending ticket completion information". The bar code formats of Storch, and the encoding and decoding techniques of Storch, do not "provide a means for sending" anything, nor does Roberts.

Further with respect to reason (b), the second combination (Storch and The Economist) does not further the proposed motivation of "providing a means for determining a monetary value". Whatever means in The Economist for determining a monetary value would seem to be unaltered by the bar code formats of Storch, and the encoding and decoding techniques of Storch.

With respect to reason (c), the first and second combinations (as well as any combination of the references) have nothing to do with the embodiment of claim 1. Further, as described *Group I*

above, any such combination would still lack several features of claim 1, and these features have significant advantages, also as explained above. Finally, any such combination would not solve any the problems addressed by the embodiment of claim 1.

Thus the Examiner has not shown a motivation in the prior art of record to modify or combine the references in any manner that renders the claims of the Group obvious.

#### 1.3.4. Nonanalogous References

In order to rely on a reference as a basis for rejection of the applicant's invention, the reference must either be in the field of the applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. In re Oetiker, 977 F.2d 1443, 1447 (Fed. Cir. 1992).

Storch is directed to optimal coding which may be used for counterfeit detection and / or deterrence. Col. 4, lines 10 – 11.

In Roberts, if non-completed tickets are stolen, the thief will not be in possession of completed lottery tickets. Col. 2, lines 29 - 31.

In contrast, The Economist is directed to a method to eliminate the need for change in transactions. Lines 1 – 3.

None of the above references is in the field of the applicant's endeavor, and none of the above references is reasonably pertinent to the particular problem addressed by the embodiment of the claims of the Group, or of any other claim.

#### 1.4. The Claims of Group I are Allowable Over the Cited References

As described above, the Examiner has failed to provide a *prima facie* showing of obviousness. In addition, the references cannot be combined in any manner that would render the claims of the Group obvious.

##### 1.4.1. The references do not suggest *purchasing at least one lottery ticket based on the monetary value and the set of ticket numbers after the step of selecting [a ticket record that includes a set of ticket numbers]*

Despite the assertions in the Office Actions, Storch does not suggest *allocating a portion of a ticket*. Simply put, in Storch there is no description of *purchasing at least one lottery ticket based on* anything, much less *based on the monetary value and the set of ticket numbers*, and much less performed after a *step of selecting [a ticket record that includes a set of ticket numbers]*. As described above, Storch generally describes various schemes for encoding information in bar codes, including representing integer and / or fractional numerical information in bar codes. Col. 4, lines 17 - 25; Col. 42, lines 23 – 25; Col. 70, lines 50 – 54.

Regarding lottery tickets, Storch discloses generally that the bar codes of Storch may be used on lottery tickets, e.g., to detect fraud. Col. 4, lines 58 – 61; Col. 67, lines 11 - 16; Col. 66, lines 46 - 52.

Roberts likewise does not suggest *purchasing at least one lottery ticket based on the monetary value and the set of ticket numbers after the step of selecting [a ticket record that includes a set of ticket numbers]*. At best, Roberts describes that purchasers purchase lottery tickets. See Abstract.

The Economist has nothing at all to do with tickets, much less purchasing at least one lottery ticket.

##### 1.4.2. The references do not suggest *outputting the ticket numbers and a fractional lottery ticket value that is based on the monetary value*

*Group I*

Simply put, whatever may be output in any reference of record is not *a fractional lottery ticket value*, much less *a fractional lottery ticket value that is based on the [determined] monetary value*.

Therefore, nothing in any reference, alone or in combination, can suggest *outputting ... a portion identifier that identifies the allocated portion of the ticket*.

In conclusion, the Examiner has not set forth a *prima facie* case of obviousness of the claims of Group I, none of the references (alone or in combination) disclose or suggest the limitations of the claims of Group I, and none of the references (alone or in combination) possess the advantages conferred by those limitations, as discussed in detail above in Section 1.2 "Advantages of Independent Claim 1". Accordingly, for at least those reasons, the claims of Group I are patentable in view of the cited references.

*Group I*

## 2. Group II

### SEPARATE ARGUMENT OF PATENTABILITY

Group II includes dependent claim 2. Dependent claim 2 depends from independent claim 1, discussed above in Group I. Accordingly, all arguments above with respect to Group I are equally applicable to Group II, and the claims of Group II are patentable at least for the same reasons given above for Group I. Moreover, additional arguments are provided below for the patentability of the claims of Group II, regardless of the patentability of the claims of Group I.

As discussed below, the rejection of the claims of Group II is flawed because the Examiner has not made a *prima facie* case of unpatentability of any claim of Group II. The Examiner has not shown all limitations of any claim to be disclosed or suggested by the references. The rejection is also based on improper combinations and modifications of the references without adequate motivation in the prior art for making the proposed combinations and modifications.

Further, no claim of Group II can be deemed obvious in light of the references of record, alone or in any combination, because the cited references, alone or in any combination, cannot be interpreted in a manner that would disclose or suggest the limitations of any pending claim. Further, the prior art of record does not contain any proper motivation to combine or modify the references in any way which renders any claim of Group II obvious.

#### 2.1. Dependent Claim 2

Dependent claim 2 is directed to a method for facilitating the purchase of fractional lottery tickets using a point-of-sale terminal. The method comprises determining a monetary value based on an amount of change due for a purchase. A ticket record that includes a set of ticket numbers is selected.

At least one lottery ticket is purchased based on the monetary value and the set of ticket numbers after the step of selecting. The ticket numbers and a fractional lottery ticket value that is based on the monetary value are output.

*Group II*

## 2.2. Advantages of Dependent Claim 2

In addition to the advantages discussed above in Section 1.2 with respect to Group I, the embodiment of claim 2 provides several advantages not even recognized, much less disclosed or suggested, by the prior art of record, either alone or in combination. These advantages further render the claimed subject matter nonobvious over the cited art.

Because *at least one lottery ticket is purchased based on the monetary value*, and this *monetary value is based on an amount of change due for a purchase*, the *purchasing* of the ticket(s) is tied to *an amount of change due for a purchase*. This facilitates the play of fractional lottery tickets.

There are numerous advantages to providing a fractional lottery ticket in exchange for change due. For example, dispensing and collecting coins is costly and burdensome. Furthermore, many customers consider coins to be dirty, and would prefer not to handle them. Thus, many customers will find the exchange of change due for a fractional lottery ticket to be very desirable. Application, page 3, lines 15 – 22. Accordingly, many customers will willingly purchase a fractional lottery ticket in exchange for change due.

An amount paid (e.g., change due) could, for instance, dictate the size of the portion of the ticket, and thus the corresponding value of the ticket if it is a winning ticket. For example, for \$0.26, the customer may be sold a 26% share of a \$1 lottery ticket. Application, page 3, lines 11 - 14.

Similarly, by *outputting ... a fractional lottery ticket value that is based on the monetary value*, and this *monetary value is based on an amount of change due for a purchase*, the *fractional lottery ticket value* is based on the *amount of change due*. Again, this facilitates the play of fractional lottery tickets, which have numerous advantages.

A great many more advantageous and diverse uses of the claimed invention, both explicit and implicit in the present Application, are possible and would be apparent to those of skill in the art based on the Appellants' disclosure.

## 2.3. No Prima Facie Showing of Unpatentability of the Claims of Group II

A reading of the rejections of the claims of the Group reveals that the Examiner has consistently ignored or misinterpreted the limitations of the claims. Several limitations are not *Group II*

disclosed or suggested by the references of record. Accordingly, the Examiner has not presented a *prima facie* case of obviousness of any claim of the Group.

**2.3.1. No showing that the references suggest *determining a monetary value based on an amount of change due for a purchase***

On page 5 of the Final Office Action, the Examiner concedes that Storch does not disclose such a feature, but The Economist “shows elements that suggest ‘determining a monetary value based on an amount of change due for a purchase’ ”.

Though a goal of the system described in The Economist is to eliminate change in transactions, it does not appear that anything in this system is *based on an amount of change due*, much less a *monetary value*. The price in this system is rounded up or down based on two numbers between 1 and 100, chosen by the shopper and cash register respectively. Thus, if this rounded price is considered a monetary value which is determined, it is based on three values only: the original (unrounded) purchase price, the number chosen by the shopper, and the number chosen by the cash register. In other words, the rounded price in The Economist is not based on *an amount of change due for a purchase*.

Further, as discussed above, a reference only “suggests” a limitation when there is some showing in the references of record that the prior art would have provided a motivation to modify a reference to result in the “suggested” limitations. There is no showing, purported or otherwise, in any Office Action of facts in the record that would motivate one of ordinary skill in the art to make the proposed modification of The Economist to yield what is purportedly “suggested” by The Economist. The lack of any motivation to combine or modify the references is discussed below.

**2.3.2. No showing that the references suggest *purchasing at least one lottery ticket based on the monetary value, which is in turn based on an amount of change due for a purchase***

Claim 2 refines the step of *determining a monetary value* by *determining a monetary value based on an amount of change due for a purchase*. Thus in claim 2 the other steps that

*Group II*

involve the *monetary value* are affected. The Examiner has ignored these effects and thus has ignored limitations of claim 2.

There has been no showing or attempted showing that any reference discloses or suggests *purchasing at least one lottery ticket based on the monetary value*, which is in turn *based on an amount of change due for a purchase*. As described in Section 1.3.1 above, the Examiner has not shown that any reference or combination thereof suggests *purchasing at least one lottery ticket based on the monetary value*. The Examiner has not even attempted to show that any reference suggests such *purchasing ... based on an amount of change due for a purchase*.

### **2.3.3. No showing that the references suggest *outputting the ticket numbers and a fractional lottery ticket value that is based on the monetary value, which is in turn based on an amount of change due for a purchase***

There has been no showing or attempted showing that any reference discloses or suggests *outputting the ticket numbers and a fractional lottery ticket value that is based on the monetary value*, which is in turn *based on an amount of change due for a purchase*. As described in Section 1.3.2 above, the Examiner has not shown that any reference or combination thereof suggests *outputting the ticket numbers and a fractional lottery ticket value that is based on the monetary value*. The Examiner has not even attempted to show that any reference suggests that such a fractional lottery ticket value is *based on an amount of change due for a purchase*.

### **2.3.4. No showing of a proper motivation to combine the references**

The Examiner simply has not shown a motivation in the prior art of record to modify or combine the disparate references in the way suggested by the Examiner, or in any other manner that renders the claims obvious.

In addition to the deficiencies described in Section 1.3.3 above, the Examiner has asserted with respect to claim 2 that one of ordinary skill in the art at the time the invention was made would have combined The Economist with Storch because “such combination would have provided means for ‘determining a monetary value ...’ (See The Economist (p. 1)).” Final Office Action, page 5, paragraph 5.  
*Group II*

However, the combination of The Economist and Storch has nothing to do with the embodiment of claim 2, as discussed above.

The proposed combination (as well as any combination of the references) has nothing to do with the embodiment of claim 2. The Economist has nothing to do with tickets, much less fractional lottery tickets. Similarly, Storch and Roberts have nothing to do with change due for a purchase, much less fractional lottery tickets, much less a fractional lottery ticket value that is based on the monetary value, which is in turn based on *an amount of change due for a purchase*.

Further, as described above, any such combination would still lack several features of claim 2, and these features have significant advantages, also as explained above. Further, any such combination would not solve any the problems addressed by the embodiment of claim 2.

Thus the Examiner has not shown a motivation in the prior art of record to modify or combine the references in any manner that renders the claims of the Group obvious.

## **2.4. The Claims of Group II are Allowable Over the Cited References**

As described above, the Examiner has failed to provide a *prima facie* showing of obviousness. In addition, the references cannot be combined in any manner that would render the claims of the Group obvious.

### **2.4.1. The references do not suggest *determining a monetary value based on an amount of change due for a purchase***

No reference discloses *determining a monetary value based on an amount of change due for a purchase*.

Neither Storch nor Roberts mention *change due for a purchase*. The Economist seeks to eliminate change due by randomly rounding prices up or down. Thus, no reference of record suggests using *change due for a purchase* for anything, much less for *determining a monetary value*.

In conclusion, the Examiner has not set forth a *prima facie* case of obviousness of the claims of Group II, none of the references (alone or in combination) disclose or suggest the *Group II*

limitations of the claims of Group II, and none of the references (alone or in combination) possess the advantages conferred by those limitations, as discussed in detail above in Section 2.2 "Advantages of Dependent Claim 2". Accordingly, for at least those reasons, the claims of Group II are patentable in view of the cited references.

*Group II*

### **3. Group III**

#### **SEPARATE ARGUMENT OF PATENTABILITY**

Group III includes dependent claims **7 and 8**. Dependent claim **7** depends from independent claim **1**, which is discussed above in Group I. Dependent claim **8** depends from claim **7**.

Accordingly, all arguments above with respect to Group I are equally applicable to Group III, and the claims of Group III are patentable at least for the same reasons given above for Group I. Moreover, additional arguments are provided below for the patentability of the claims of Group III, regardless of the patentability of the claims of Group I.

For brevity, the discussion below refers to claim **7**, but the arguments are likewise applicable to claim **8**.

##### **3.1. Dependent Claim 7**

Dependent claim **7** is directed to a method for facilitating the purchase of fractional lottery tickets using a point-of-sale terminal. The method comprises determining a monetary value, and selecting a ticket record that includes a set of ticket numbers.

At least one lottery ticket is purchased based on the monetary value and the set of ticket numbers after the step of selecting. The ticket numbers and a fractional lottery ticket value that is based on the monetary value are output. A total value amount of the selected ticket record is increased in accordance with the fractional lottery ticket value.

##### **3.2. Advantages of Dependent Claim 7**

The embodiment of claim **7** provides several advantages not even recognized, much less disclosed or suggested, by the prior art of record, either alone or in combination.

In addition to the advantages discussed above with respect to Group I, by *increasing a total value amount of the selected ticket record in accordance with the fractional lottery ticket value*, the selected ticket record may be adjusted to reflect the value of a fractional lottery ticket

*Group III*

that is sold. Thus, the selected ticket record may indicate, e.g., when additional tickets should be acquired.

A great many more advantageous and diverse uses of the claimed invention, both explicit and implicit in the present Application, are possible and would be apparent to those of skill in the art based on the Appellants' disclosure.

### **3.3. No Prima Facie Showing of Unpatentability of the Claims of Group III**

A reading of the rejections of the claims of the Group reveals that the Examiner has consistently ignored or misinterpreted the limitations of the claims. Several limitations are not disclosed or suggested by the references of record. Accordingly, the Examiner has not presented a prima facie case of obviousness of any claim of the Group.

#### **3.3.1. No showing that the references suggest *increasing a total value amount of the selected ticket record in accordance with the fractional lottery ticket value***

On page 8 of the Final Office Action, the Examiner concedes that Storch does not disclose such a feature, but The Economist "shows elements that suggest" such a feature.

Clearly, the single paragraph disclosure of The Economist has nothing to do with tickets, ticket records or fractional lottery tickets, much less increasing anything in accordance with a fractional lottery ticket value.

Further, as discussed above, a reference only "suggests" a limitation when there is some showing in the references of record that the prior art would have provided a motivation to modify a reference to result in the "suggested" limitations. There is no showing, purported or otherwise, in any Office Action of facts in the record that would motivate one of ordinary skill in the art to make the proposed modification of The Economist to yield what is purportedly "suggested" by The Economist. The lack of any motivation to combine or modify the references is discussed below.

#### **3.3.2. No showing of a proper motivation to combine the references Group III**

The Examiner simply has not shown a motivation in the prior art of record to modify or combine the disparate references in the way suggested by the Examiner, or in any other manner that renders the claims obvious.

In addition to the deficiencies described in Section 1.3.3 above, the Examiner has asserted with respect to claim 7 that one of ordinary skill in the art at the time the invention was made would have combined The Economist with Storch because "such combination would have provided means for 'determining a monetary value.' (See The Economist (p. 1))." Final Office Action, page 9, paragraph 1.

This motivation fails for three reasons:

- (a) this motivation would not actually have prompted one to make the proposed combination;
- (b) the combination would not in any way further the proposed motivation; and
- (c) the combination has nothing to do with the embodiment of claim 7, as discussed above in Section 3.3.1.

With respect to reason (a), the motivation, "providing a means for determining a monetary value", would not cause one to seek out optimal encoding of information in bar codes, much less the particular method of Storch. In fact, there is no way in which bar codes appear to fit with the system disclosed in The Economist for rounding a purchase price.

With respect to reason (b), the combination (Storch and The Economist) does not further the proposed motivation of "providing a means for determining a monetary value". The bar code formats of Storch, and the rounding of purchase prices of The Economist, do not "provide a means for determining a monetary value".

With respect to reason (c), the combination (as well as any combination of the references) has nothing to do with the embodiment of claim 7. Further, as described above, any such combination would still lack several features of claim 7, and these features have significant advantages, also as explained above. Further, any such combination would not solve any the problems addressed by the embodiment of claim 7.

Thus the Examiner has not shown a motivation in the prior art of record to modify or combine the references in any manner that renders the claims of the Group obvious.

*Group III*

### 3.4. The Claims of Group III are Allowable Over the Cited References

As described above, the Examiner has failed to provide a *prima facie* showing of obviousness. In addition, the references cannot be combined in any manner that would render the claims of the Group obvious.

#### 3.4.1. The references do not suggest *increasing a total value amount of the selected ticket record in accordance with the fractional lottery ticket value*

The Economist does not even hint at *lottery tickets* at all. Roberts and Storch do not describe fractional lottery tickets, or total value amounts, much less *increasing a total value amount of a selected ticket record* based on anything related in any way to a *fractional lottery ticket value*.

In conclusion, the Examiner has not set forth a *prima facie* case of obviousness of the claims of Group III, none of the references (alone or in combination) disclose or suggest the limitations of the claims of Group III, and none of the references (alone or in combination) possess the advantages conferred by those limitations, as discussed in detail above in Section 3.2 "Advantages of Dependent Claim 7". Accordingly, for at least those reasons, the claims of Group III are patentable in view of the cited references.

## 4. Group IV

### SEPARATE ARGUMENT OF PATENTABILITY

Group IV includes dependent claim 9. Dependent claim 9 depends from independent claim 1, discussed above in Group I. Accordingly, all arguments above with respect to Group I are equally applicable to Group IV, and the claims of Group IV are patentable at least for the same reasons given above for Group I. Moreover, additional arguments are provided below for the patentability of the claims of Group IV, regardless of the patentability of the claims of Group I.

#### 4.1. Dependent Claim 9

Dependent claim 9 is directed to a method for facilitating the purchase of fractional lottery tickets using a point-of-sale terminal. The method comprises determining a monetary value, and selecting a ticket record that includes a set of ticket numbers. The selected ticket record has an amount to round up at least as great as a fractional lottery ticket value.

At least one lottery ticket is purchased based on the monetary value and the set of ticket numbers after the step of selecting. The ticket numbers and the fractional lottery ticket value that is based on the monetary value are output.

#### 4.2. Advantages of Dependent Claim 9

The embodiments of claim 9 provide several advantages not even recognized, much less disclosed or suggested, by the prior art of record, either alone or in combination.

In addition to the advantages discussed above with respect to Group I, by *selecting a ticket record having an amount to round up at least as great as the fractional lottery ticket value*, a ticket record with sufficient value remaining to allocate to another fractional lottery ticket may be selected.

As described in the present application, an amount to round up may be, e.g., a minimal amount that, when added to the total value amount of the ticket record, yields a sum that is a whole-number multiple of the corresponding lottery ticket price. Present Application, page 11, *Group IV*

lines 14 - 16. This provides information regarding, e.g., how many tickets must be purchased to cover the fractional lottery tickets represented by the ticket record.

A great many more advantageous and diverse uses of the claimed invention, both explicit and implicit in the present Application, are possible and would be apparent to those of skill in the art based on the Appellants' disclosure.

#### **4.3. No Prima Facie Showing of Unpatentability of the Claims of Group IV**

A reading of the rejections of the claims of the Group reveals that the Examiner has consistently ignored or misinterpreted the limitations of the claims. Several limitations are not disclosed or suggested by the references of record. Accordingly, the Examiner has not presented a prima facie case of obviousness of any claim of the Group.

##### **4.3.1. No showing that the references suggest *selecting a ticket record having an amount to round up at least as great as the fractional lottery ticket value***

On pages 9 - 10 of the Final Office Action, the Examiner concedes that Storch does not disclose such a feature, but The Economist "shows elements that suggest" such a feature.

Clearly, the single paragraph disclosure of The Economist has nothing to do with tickets, ticket records or fractional lottery tickets, much less selecting anything in accordance with a fractional lottery ticket value.

Further, as discussed above, a reference only "suggests" a limitation when there is some showing in the references of record that the prior art would have provided a motivation to modify a reference to result in the "suggested" limitations. There is no showing, purported or otherwise, in any Office Action of facts in the record that would motivate one of ordinary skill in the art to make the proposed modification of The Economist to yield what is purportedly "suggested" by The Economist. The lack of any motivation to combine or modify the references is discussed below.

##### **4.3.2. No showing of a proper motivation to combine the references Group IV**

The Examiner simply has not shown a motivation in the prior art of record to modify or combine the disparate references in the way suggested by the Examiner, or in any other manner that renders the claims obvious.

In addition to the deficiencies described in Section 1.3.3 above, the Examiner has asserted with respect to claim 9 that one of ordinary skill in the art at the time the invention was made would have combined The Economist with Storch because “such combination would have provided means for ‘determining a monetary value.’ (See The Economist (p. 1)).” Final Office Action, page 10, paragraph 1.

This motivation fails for three reasons:

- (a) this motivation would not actually have prompted one to make the proposed combination;
- (b) the combination would in not any way further the proposed motivation; and
- (c) the combination has nothing to do with the embodiment of claim 9, as discussed above in Section 4.3.1.

Reasons (a) and (b) have been discussed in Section 1.3.3 above.

With respect to reason (c), the combination (as well as any combination of the references) has nothing to do with the embodiment of claim 9. Further, as described above, any such combination would still lack several features of claim 9, and these features have significant advantages, also as explained above. Further, any such combination would not solve any the problems addressed by the embodiment of claim 9.

Thus the Examiner has not shown a motivation in the prior art of record to modify or combine the references in any manner that renders the claims of the Group obvious.

#### **4.4. The Claims of Group IV are Allowable Over the Cited References**

As described above, the Examiner has failed to provide a *prima facie* showing of obviousness. In addition, the references cannot be combined in any manner that would render the claims of the Group obvious.

*Group IV*

**4.4.1. The references do not suggest selecting a ticket record having an amount to round up at least as great as the fractional lottery ticket value**

The Economist does not even hint at *lottery tickets* at all. Roberts and Storch do not describe fractional lottery tickets, or ticket records, much less *selecting a ticket record* based on anything related in any way to a *fractional lottery ticket value*.

In conclusion, the Examiner has not set forth a *prima facie* case of obviousness of the claims of Group IV, none of the references (alone or in combination) disclose or suggest the limitations of the claims of Group IV, and none of the references (alone or in combination) possess the advantages conferred by those limitations, as discussed in detail above in Section 4.2 "Advantages of Dependent Claim 9". Accordingly, for at least those reasons, the claims of Group IV are patentable in view of the cited references.

## 5. Group V

### SEPARATE ARGUMENT OF PATENTABILITY

Group V includes dependent claim 10. Dependent claim 10 depends from independent claim 1, discussed above in Group I. Accordingly, all arguments above with respect to Group I are equally applicable to Group V, and the claims of Group V are patentable at least for the same reasons given above for Group I. Moreover, additional arguments are provided below for the patentability of the claims of Group V, regardless of the patentability of the claims of Group I.

#### 5.1. Dependent Claim 10

Dependent claim 10 is directed to a method for facilitating the purchase of fractional lottery tickets using a point-of-sale terminal. The method comprises determining a monetary value.

A ticket record that includes a set of ticket numbers is selected by determining a set of ticket records that each have an amount to round up at least as great as a fractional lottery ticket value. A ticket record which has a minimal amount to round up is selected from this set of ticket records.

At least one lottery ticket is purchased based on the monetary value and the set of ticket numbers after the step of selecting. The ticket numbers and the fractional lottery ticket value that is based on the monetary value are output.

#### 5.2. Advantages of Dependent Claim 10

The embodiments of claim 10 provide several advantages not even recognized, much less disclosed or suggested, by the prior art of record, either alone or in combination.

In addition to the advantages discussed above with respect to Group I, by *determining a set of ticket records that each have an amount to round up at least as great as the fractional lottery ticket value*, a set of ticket records with sufficient value remaining to allocate to another fractional lottery ticket may be identified.

*Group V*

As described in the present application, an amount to round up may be, e.g., a minimal amount that, when added to the total value amount of the ticket record, yields a sum that is a whole-number multiple of the corresponding lottery ticket price. Present Application, page 11, lines 14 - 16. This provides information regarding, e.g., how many tickets must be purchased to cover the fractional lottery tickets represented by the ticket record.

By *selecting a ticket record from the set of ticket records which has a minimal amount to round up*, the ticket record with the minimum amount of value remaining may be selected. This leaves remaining records available for, e.g., subsequent allocation of even larger amounts.

A great many more advantageous and diverse uses of the claimed invention, both explicit and implicit in the present Application, are possible and would be apparent to those of skill in the art based on the Appellants' disclosure.

### **5.3. No Prima Facie Showing of Unpatentability of the Claims of Group V**

A reading of the rejections of the claims of the Group reveals that the Examiner has consistently ignored or misinterpreted the limitations of the claims. Several limitations are not disclosed or suggested by the references of record. Accordingly, the Examiner has not presented a *prima facie* case of obviousness of any claim of the Group.

#### **5.3.1. No showing that the references suggest *determining a set of ticket records that each have an amount to round up at least as great as the fractional lottery ticket value; and selecting a ticket record from the set of ticket records which has a minimal amount to round up***

On page 10 of the Final Office Action, the Examiner concedes that Storch does not disclose such a feature, but The Economist "shows elements that suggest" such a feature.

Clearly, the single paragraph disclosure of The Economist has nothing to do with tickets, ticket records or fractional lottery tickets, much less selecting anything in accordance with a minimal amount to round up.

Further, as discussed above, a reference only "suggests" a limitation when there is some showing in the references of record that the prior art would have provided a motivation to modify *Group V*

a reference to result in the “suggested” limitations. There is no showing, purported or otherwise, in any Office Action of facts in the record that would motivate one of ordinary skill in the art to make the proposed modification of The Economist to yield what is purportedly “suggested” by The Economist. The lack of any motivation to combine or modify the references is discussed below.

### **5.3.2. No showing of a proper motivation to combine the references**

The Examiner simply has not shown a motivation in the prior art of record to modify or combine the disparate references in the way suggested by the Examiner, or in any other manner that renders the claims obvious.

In addition to the deficiencies described in Section 1.3.3 above, the Examiner has asserted with respect to claim 10 that one of ordinary skill in the art at the time the invention was made would have combined The Economist with Storch because “such combination would have provided means for ‘determining a monetary value.’ (See The Economist (p. 1)).” Final Office Action, page 10, paragraph 1.

This motivation fails for three reasons:

- (a) this motivation would not actually have prompted one to make the proposed combination;
- (b) the combination would in not any way further the proposed motivation; and
- (c) the combination has nothing to do with the embodiment of claim 10, as discussed above in Section 5.3.1.

Reasons (a) and (b) have been discussed in Section 1.3.3 above.

With respect to reason (c), the combination (as well as any combination of the references) has nothing to do with the embodiment of claim 9. Further, as described above, any such combination would still lack several features of claim 9, and these features have significant advantages, also as explained above. Further, any such combination would not solve any the problems addressed by the embodiment of claim 9.

Thus the Examiner has not shown a motivation in the prior art of record to modify or combine the references in any manner that renders the claims of the Group obvious.  
*Group V*

#### **5.4. The Claims of Group V are Allowable Over the Cited References**

As described above, the Examiner has failed to provide a *prima facie* showing of obviousness. In addition, the references cannot be combined in any manner that would render the claims of the Group obvious.

##### **5.4.1. The references do not suggest determining a set of ticket records that each have an amount to round up at least as great as the fractional lottery ticket value; and selecting a ticket record from the set of ticket records which has a minimal amount to round up**

The Economist does not even hint at *lottery tickets* at all. Roberts and Storch do not describe fractional lottery tickets, or ticket records, much less *selecting a ticket record* based on anything related in any way to *a minimal amount to round up*.

In conclusion, the Examiner has not set forth a *prima facie* case of obviousness of the claims of Group V, none of the references (alone or in combination) disclose or suggest the limitations of the claims of Group V, and none of the references (alone or in combination) possess the advantages conferred by those limitations, as discussed in detail above in Section 5.2 "Advantages of Dependent Claim 10". Accordingly, for at least those reasons, the claims of Group V are patentable in view of the cited references.

## 6. Group VI

### SEPARATE ARGUMENT OF PATENTABILITY

Group VI includes independent claims **11, 22 and 23**, and dependent claims **12 and 13**. Independent claim **11** includes all of the limitations of claim **2**, discussed above with respect to Group II. Accordingly, all arguments above with respect to Group II are equally applicable to Group VI, and the claims of Group VI are patentable at least for the same reasons given above for Group II. Moreover, additional arguments are provided below for the patentability of the claims of Group VI, regardless of the patentability of the claims of Group II.

As discussed below, the rejection of the claims of Group VI is flawed because the Examiner has not made a *prima facie* case of unpatentability of any claim of Group VI. The Examiner has not shown all limitations of any claim to be disclosed or suggested by the references. The rejection is also based on improper combinations and modifications of the references without adequate motivation in the prior art for making the proposed combinations and modifications.

Further, no claim of Group VI can be deemed obvious in light of the references of record, alone or in any combination, because the cited references, alone or in any combination, cannot be interpreted in a manner that would disclose or suggest the limitations of any pending claim.

Further, the prior art of record does not contain any proper motivation to combine or modify the references in any way which renders any claim of Group VI obvious.

For brevity, the discussion below refers to independent claim **11**, but the arguments are likewise applicable to claims **12, 13, 22 and 23**.

#### 6.1. Independent Claim 11

Independent claim **11** is directed to a method for facilitating the purchase of fractional lottery tickets using a point-of-sale terminal. The method comprises determining an amount of change due for a purchase, and determining a monetary value based on the amount of change due.

*Group VI*

A ticket record that includes a set of ticket numbers is selected. At least one lottery ticket is purchased based on the value and the set of ticket numbers after the step of selecting. The ticket numbers and a fractional lottery ticket value that is based on the monetary value are output.

Independent claim 22 is directed to an apparatus, and includes a processor operative to perform steps substantially as described above with respect to method claim 11.

Independent claim 23 is directed to a computer readable medium encoded with processing instructions for implementing a method substantially as described above with respect to method claim 11.

For brevity, the discussion below refers to method claim 11, but the arguments are likewise applicable to the remaining claims of the Group.

## 6.2. Advantages of Independent Claim 11

In addition to the advantages discussed above in Section 1.2 with respect to Group I, the embodiment of claim 2 provides several advantages not even recognized, much less disclosed or suggested, by the prior art of record, either alone or in combination. These advantages further render the claimed subject matter nonobvious over the cited art.

By *determining an amount of change due for a purchase*, the amount of change due may be known. It is advantageous to determine this information because change is generally not highly desired by customers. Thus, many customers will gladly forego their change in exchange for something else (e.g., a fractional lottery ticket). Thus, change can be used to elicit subtle purchasing behavior from customers.

A great many more advantageous and diverse uses of the claimed invention, both explicit and implicit in the present Application, are possible and would be apparent to those of skill in the art based on the Appellants' disclosure.

## 6.3. No Prima Facie Showing of Unpatentability of the Claims of Group VI

A reading of the rejections of the claims of the Group reveals that the Examiner has consistently ignored or misinterpreted the limitations of the claims. Several limitations are not

*Group VI*

disclosed or suggested by the references of record. Accordingly, the Examiner has not presented a *prima facie* case of obviousness of any claim of the Group.

#### **6.3.1. No showing that the references suggest *determining an amount of change due for a purchase***

On pages 11 - 12 of the Final Office Action, the Examiner concedes that the references of record do not disclose such a feature.

#### **6.3.4. No showing of a proper motivation to combine the references**

The Examiner simply has not shown a motivation in the prior art of record to modify or combine the disparate references in the way suggested by the Examiner, or in any other manner that renders the claims obvious.

In addition to the deficiencies described in Section 2.3.4 above, the Examiner has asserted with respect to claim 11 that one of ordinary skill in the art at the time the invention was made would have combined The Economist with the "well known concept of determining an amount of change due for a purchase" because "such combination would have provided means for 'determining a monetary value ...'" (See The Economist (p. 1))." Final Office Action, page 12, paragraph 2.

The Economist clearly dispenses with any reason for *determining an amount of change due for a purchase*. Since prices are randomly rounded either up or down in The Economist, that reference teaches away from anything requiring *determining an amount of change due for a purchase*. Thus, it is unreasonable to assert that The Economist could be combined with anything that requires *determining an amount of change due for a purchase*.

The proposed combination (as well as any combination of the references) has nothing to do with the embodiment of claim 11. The Economist has nothing to do with tickets, much less fractional lottery tickets. Similarly, Storch and Roberts have nothing to do with change due for a purchase, much less fractional lottery tickets, much less a fractional lottery ticket value that is based on the monetary value, which is in turn based on *an amount of change due for a purchase*.

*Group VI*

Further, as described above, any such combination would still lack several features of claim 11, and these features have significant advantages, also as explained above. Further, any such combination would not solve any the problems addressed by the embodiment of claim 11.

Thus the Examiner has not shown a motivation in the prior art of record to modify or combine the references in any manner that renders the claims of the Group obvious.

#### **6.4. The Claims of Group VI are Allowable Over the Cited References**

As described above, the Examiner has failed to provide a *prima facie* showing of obviousness. In addition, the references cannot be combined in any manner that would render the claims of the Group obvious.

##### **6.4.1. The references do not suggest *determining an amount of change due for a purchase***

No reference of record discloses *determining an amount of change due for a purchase*.

Neither Storch nor Roberts mention *change due for a purchase*. The Economist seeks to eliminate change due by randomly rounding prices up or down. Thus, no reference of record suggests *determining an amount of change due for a purchase*.

In conclusion, the Examiner has not set forth a *prima facie* case of obviousness of the claims of Group VI, none of the references (alone or in combination) disclose or suggest the limitations of the claims of VI, and none of the references (alone or in combination) possess the advantages conferred by those limitations, as discussed in detail above in Section 6.2 "Advantages of Dependent Claim 11". Accordingly, for at least those reasons, the claims of Group VI are patentable in view of the cited references.

*Group VI*

## 7. Group VII

### SEPARATE ARGUMENT OF PATENTABILITY

Group VII includes dependent claim 14. Dependent claim 14 depends from independent claim 11, discussed above in Group VI. Accordingly, all arguments above with respect to Group VI are equally applicable to Group VII, and the claims of Group VII are patentable at least for the same reasons given above for Group VI. Moreover, additional arguments are provided below for the patentability of the claims of Group VII, regardless of the patentability of the claims of Group VI.

As discussed below, the rejection of the claims of Group VII is flawed because the Examiner has not made a *prima facie* case of unpatentability of any claim of Group VII. The Examiner has not shown all limitations of any claim to be disclosed or suggested by the references. The rejection is also based on improper combinations and modifications of the references without adequate motivation in the prior art for making the proposed combinations and modifications.

Further, no claim of Group VII can be deemed obvious in light of the references of record, alone or in any combination, because the cited references, alone or in any combination, cannot be interpreted in a manner that would disclose or suggest the limitations of any pending claim. Further, the prior art of record does not contain any proper motivation to combine or modify the references in any way which renders any claim of Group VII obvious.

#### 7.1. Dependent Claim 14

Dependent claim 14 is directed to a method for facilitating the purchase of fractional lottery tickets using a point-of-sale terminal. The method comprises determining an amount of change due for a purchase, and determining a monetary value based on the amount of change due. An offer to exchange a fractional lottery ticket for change due is output.

A ticket record that includes a set of ticket numbers is selected. At least one lottery ticket is purchased based on the value and the set of ticket numbers after the step of selecting. The ticket numbers and a fractional lottery ticket value that is based on the monetary value are output.

*Group VII*

## 7.2. Advantages of Dependent Claim 14

In addition to the advantages discussed above with respect to Group VI, the embodiment of claim 14 provides several advantages not even recognized, much less disclosed or suggested, by the prior art of record, either alone or in combination. These advantages render the claimed subject matter nonobvious over the cited art.

By *outputting an offer to exchange a fractional lottery ticket for change due*, a customer may be informed of the opportunity to exchange his *change due* (which is typically not desirable) for a *fractional lottery ticket* (which is often highly desirable to certain people). Since the offer is for something (*change due*) that is frequently undesirable, the offer is likely to be accepted. Thus, increased sales of tickets can result.

A great many more advantageous and diverse uses of the claimed invention, both explicit and implicit in the present Application, are possible and would be apparent to those of skill in the art based on the Appellants' disclosure.

## 7.3. No Prima Facie Showing of Unpatentability of the Claims of Group VII

A reading of the rejections of the claims of the Group reveals that the Examiner has consistently ignored or misinterpreted the limitations of the claims. Several limitations are not disclosed or suggested by the references of record. Accordingly, the Examiner has not presented a *prima facie* case of obviousness of any claim of the Group.

### 7.3.1. No showing that the references suggest *outputting an offer to exchange a fractional lottery ticket for change due*

On page 15 of the Final Office Action, the Examiner concedes that Storch does not disclose such a feature, but The Economist "shows elements that suggest" such a feature.

A goal of the system described in The Economist is to eliminate change in transactions by rounding prices up or down randomly. The Economist certainly does not suggest that *change due* should be exchanged for anything; in The Economist any losses in rounded-up prices are hoped to be counterbalanced by gains in rounded-down prices in the long run.  
*Group VII*

Further, The Economist clearly has no suggestion of tickets of any sort, much less fractional lottery tickets.

Finally, The Economist clearly has no offers of any sort - purchase prices are rounded at random.

Further, as discussed above, a reference only “suggests” a limitation when there is some showing in the references of record that the prior art would have provided a motivation to modify a reference to result in the “suggested” limitations. There is no showing, purported or otherwise, in any Office Action of facts in the record that would motivate one of ordinary skill in the art to make the proposed modification of The Economist to yield what is purportedly “suggested” by The Economist. The lack of any motivation to combine or modify the references is discussed below.

### **7.3.2. No showing of a proper motivation to combine the references**

The Examiner simply has not shown a motivation in the prior art of record to modify or combine the disparate references in the way suggested by the Examiner, or in any other manner that renders the claims obvious.

In addition to the deficiencies described above, the Examiner has asserted with respect to claim 14 that one of ordinary skill in the art at the time the invention was made would have combined The Economist with Storch because “such combination would have provided means for ‘determining a monetary value . . .’ (See The Economist (p. 1)).” Final Office Action, page 15, paragraph 4.

However, the combination of The Economist and Storch has nothing to do with the embodiment of claim 14, as discussed above in Sections 7.3.1.

The proposed combination (as well as any combination of the references) has nothing to do with the embodiment of claim 14. The Economist has nothing to do with offers to exchange change due, nor fractional lottery tickets, much less *an offer to exchange a fractional lottery ticket for change*. Similarly, Storch and Roberts have nothing to do with change due, nor fractional lottery tickets, much less *an offer to exchange a fractional lottery ticket for change*.

Further, as described above, any such combination would still lack several features of claim 14, and these features have significant advantages, also as explained above. Further, any such combination would not solve any the problems addressed by the embodiment of claim 14.

Thus the Examiner has not shown a motivation in the prior art of record to modify or combine the references in any manner that renders the claims of the Group obvious.

#### **7.4. The Claims of Group VII are Allowable Over the Cited References**

As described above, the Examiner has failed to provide a *prima facie* showing of obviousness. In addition, the references cannot be combined in any manner that would render the claims of the Group obvious.

##### **7.4.1. The references do not suggest *outputting an offer to exchange a fractional lottery ticket for change due***

Neither Storch nor Roberts mention *change due*, nor offers, much less *an offer to exchange a fractional lottery ticket for change due*. As discussed in Section 7.3.2 above, The Economist seeks to eliminate change due by randomly rounding prices (not amounts of change) up or down. Thus, The Economist teaches away from using such change for anything (e.g., in exchange for a fractional lottery ticket). The Economist also lacks any hint of *offers* or *fractional lottery tickets*.

In conclusion, the Examiner has not set forth a *prima facie* case of obviousness of the claims of Group VII, none of the references (alone or in combination) disclose or suggest the limitations of the claims of Group VII, and none of the references (alone or in combination) possess the advantages conferred by those limitations, as discussed in detail above in Section 7.2 "Advantages of Dependent Claim 14". Accordingly, for at least those reasons, the claims of Group VII are patentable in view of the cited references.

*Group VII*

## 8. Group VIII

### SEPARATE ARGUMENT OF PATENTABILITY

Group VIII includes independent claims **15, 24 and 25**. Independent claim **15** includes all of the limitations of claim **1**, discussed above with respect to Group I. Accordingly, all arguments above with respect to Group I are equally applicable to Group VIII, and the claims of Group VIII are patentable at least for the same reasons given above for Group I. Moreover, additional arguments are provided below for the patentability of the claims of Group VIII, regardless of the patentability of the claims of Group I.

As discussed below, the rejection of the claims of Group VIII is flawed because the Examiner has not made a *prima facie* case of unpatentability of any claim of Group VIII. The Examiner has not shown all limitations of any claim to be disclosed or suggested by the references. The rejection is also based on improper combinations and modifications of the references without adequate motivation in the prior art for making the proposed combinations and modifications.

Further, no claim of Group VIII can be deemed obvious in light of the references of record, alone or in any combination, because the cited references, alone or in any combination, cannot be interpreted in a manner that would disclose or suggest the limitations of any pending claim. Further, the prior art of record does not contain any proper motivation to combine or modify the references in any way which renders any claim of Group VIII obvious.

#### 8.1. Independent Claim 15

Independent claim **15** is directed to a method for facilitating the purchase of fractional lottery tickets using a point-of-sale terminal. The method comprises determining a monetary value, and selecting a ticket record that includes a set of ticket numbers.

At least one lottery ticket is purchased based on the monetary value and the set of ticket numbers after the step of selecting. The ticket numbers and a fractional lottery ticket value that is based on the monetary value are output.

A prize value of the at least one lottery ticket is determined, and a portion of the prize value based on the fractional lottery ticket value is provided.

*Group VIII*

Independent claim 24 is directed to an apparatus, and includes a processor operative to perform steps substantially as described above with respect to method claim 15.

Independent claim 25 is directed to a computer readable medium encoded with processing instructions for implementing a method substantially as described above with respect to method claim 15.

For brevity, the discussion below refers to method claim 15, but the arguments are likewise applicable to the remaining claims of the Group.

## 8.2. Advantages of Independent Claim 15

In addition to the advantages discussed above with respect to Group I, the embodiment of claim 15 provides several advantages not even recognized, much less disclosed or suggested, by the prior art of record, either alone or in combination. These advantages render the claimed subject matter nonobvious over the cited art.

*By determining a prize value of the at least one lottery ticket, and providing a portion of the prize value based on the fractional lottery ticket value*, a lottery ticket may win a portion of a prize (i.e. a portion which is based on the value of the fractional lottery ticket). Thus, a ticket which wins a smaller portion of a prize (e.g., 5%) can be sold for less (e.g., 5% of a 'whole value' ticket). In essence, a new type of lottery ticket, a fractional lottery ticket, may be sold and redeemed.

A great many more advantageous and diverse uses of the claimed invention, both explicit and implicit in the present Application, are possible and would be apparent to those of skill in the art based on the Appellants' disclosure.

## 8.3. No Prima Facie Showing of Unpatentability of the Claims of Group VIII

A reading of the rejections of the claims of the Group reveals that the Examiner has consistently ignored or misinterpreted the limitations of the claims. Several limitations are not disclosed or suggested by the references of record. Accordingly, the Examiner has not presented a prima facie case of obviousness of any claim of the Group.

*Group VIII*

**8.3.1. No showing that the references suggest determining a prize value of the at least one lottery ticket; and providing a portion of the prize value based on the fractional lottery ticket value**

On pages 17 of the Final Office Action, the Examiner concedes that Storch does not disclose such a feature, but such a feature was well known. No support is provided for this assertion.

As described above, Appellants have already disputed all of the various assertions in the First Office Action regarding what is 'well known' but lacked evidence of such subject matter in the record.

As described above, the Examiner's sweeping assertions do not constitute substantial evidence, and therefore cannot be used as prior art to the present claims.

Finally, officially-noted subject matter cannot be used as the **basis** for a rejection under Sections 102 or 103. Official Notice may be used, if at all, only to clarify the meaning of a reference.

**8.3.2. No showing of a proper motivation to combine the references**

The Examiner simply has not shown a motivation in the prior art of record to modify or combine the disparate references in the way suggested by the Examiner, or in any other manner that renders the claims obvious.

In addition to the deficiencies described above, the Examiner has asserted with respect to claim 15 that one of ordinary skill in the art at the time the invention was made would have combined The Economist with the purportedly well known subject matter () the remaining two steps of claim 15) because "such combination would have provided means for 'determining a monetary value ...' (See The Economist (p. 1))." Final Office Action, page 17, last paragraph.

However, the purported combination has nothing to do with the embodiment of claim 15, as discussed above in Sections 8.3.1.

The proposed combination (as well as any combination of the references) has nothing to do with the embodiment of claim 15. Since The Economist has nothing to do with lottery

*Group VIII*

tickets, much less fractional lottery tickets, the purported combination would not have been motivated.

Further, as described above, any such combination would still lack several features of claim 15, and these features have significant advantages, also as explained above. Further, any such combination would not solve any the problems addressed by the embodiment of claim 15.

Thus the Examiner has not shown a motivation in the prior art of record to modify or combine the references in any manner that renders the claims of the Group obvious.

#### **8.4. The Claims of Group VIII are Allowable Over the Cited References**

As described above, the Examiner has failed to provide a *prima facie* showing of obviousness. In addition, the references cannot be combined in any manner that would render the claims of the Group obvious.

##### **8.4.1. The references do not suggest *determining a prize value of the at least one lottery ticket; and providing a portion of the prize value based on the fractional lottery ticket value***

None of the references of record suggest *fractional lottery tickets, or fractional lottery ticket values*. No reference of record discloses or suggests anything regarding the *determination of a prize value of a lottery ticket*. Moreover, none of the references of record suggest providing portions of prize values, much less providing a portion of a prize value based on anything, much less based on a *fractional lottery ticket value*.

In conclusion, the Examiner has not set forth a *prima facie* case of obviousness of the claims of Group VIII, none of the references (alone or in combination) disclose or suggest the limitations of the claims of Group VIII, and none of the references (alone or in combination) possess the advantages conferred by those limitations, as discussed in detail above in Section 8.2 "Advantages of Independent Claim 15". Accordingly, for at least those reasons, the claims of Group VIII are patentable in view of the cited references.

*Group VIII*

## 9. Group IX

### SEPARATE ARGUMENT OF PATENTABILITY

Group IX includes independent claims **16, 26 and 27** and dependent claims **17, 18 and 19**.

As discussed below, the rejection of the claims of Group IX is flawed because the Examiner has not made a *prima facie* case of unpatentability of any claim of Group IX. The Examiner has not shown all limitations of any claim to be disclosed or suggested by the references. The rejection is also based on improper combinations and modifications of the references without adequate motivation in the prior art for making the proposed combinations and modifications.

Further, no claim of Group IX can be deemed obvious in light of the references of record, alone or in any combination, because the cited references, alone or in any combination, cannot be interpreted in a manner that would disclose or suggest the limitations of any pending claim. Further, the prior art of record does not contain any proper motivation to combine or modify the references in any way which renders any claim of Group IX obvious.

#### 9.1. Independent Claims 16, 26 and 27

Independent claim **16** is directed to a method for facilitating the purchase of fractional lottery tickets using a point-of-sale terminal. The method comprises determining a total value amount corresponding to a set of ticket numbers. At least one lottery ticket having the set of ticket numbers based on the total value amount is acquired.

Independent claim **26** is directed to an apparatus, and includes a processor operative to perform steps substantially as described above with respect to method claim **16**.

Independent claim **27** is directed to a computer readable medium encoded with processing instructions for implementing a method substantially as described above with respect to method claim **16**.

For brevity, the discussion below refers to method claim **16**, but the arguments are likewise applicable to the remaining claims of the Group.

*Group IX*

## 9.2. Advantages of Independent Claim 16

The embodiment of claim 16 provides several advantages not even recognized, much less disclosed or suggested, by the prior art of record, either alone or in combination. These advantages render the claimed subject matter nonobvious over the cited art.

By *determining a total value amount corresponding to a set of ticket numbers*, one may determine, e.g., the value of all fractional lottery tickets that have those ticket numbers. Such data may be used to indicate, e.g., when additional tickets should be acquired.

By *acquiring at least one lottery ticket having the set of ticket numbers based on the total value amount*, lottery tickets may be acquired when needed to cover the fractional lottery tickets represented by the total value amount. Thus a business can, e.g., provide fractional lottery tickets to customers and then acquire a group of corresponding lottery tickets before the drawing date. The prizes won by the group of lottery tickets are received by the business, which in turn pays shares of the prizes to customers based on the portions defined by the values of the fractional lottery tickets. Present Application, page 7, lines 3 - 6.

A great many more advantageous and diverse uses of the claimed invention, both explicit and implicit in the present Application, are possible and would be apparent to those of skill in the art based on the Appellants' disclosure.

## 9.3. No Prima Facie Showing of Unpatentability of the Claims of Group IX

A reading of the rejections of the claims of the Group reveals that the Examiner has consistently ignored or misinterpreted the limitations of the claims. Several limitations are not disclosed or suggested by the references of record. Accordingly, the Examiner has not presented a prima facie case of obviousness of any claim of the Group.

### 9.3.1. No showing that the references suggest *determining a total value amount corresponding to a set of ticket numbers*

The Examiner has not shown that the references, alone or in combination, suggest *determining a total value amount corresponding to a set of ticket numbers*.  
*Group IX*

On pages 18 - 19 of the Final Office Action, the Examiner concedes that Roberts does not disclose such a feature, but Storch "shows elements that suggest" such a feature. The portions of Storch that purportedly suggest this feature are the same as those discussed above Section 1.3.1 above. Those sections of Storch (as well as the entirety of Storch) are equally inapplicable to claim 16.

In Section 1.3.1 above, Applicants categorized these cited portions of Storch as follows:

- (a) Bar Code Formats,
- (b) Lottery Ticket,
- (c) Processes for Reading Bar Codes, and
- (d) Hardware Diagram:

As described above, it is clear that these portions of Storch have nothing to do with *determining a total value amount corresponding to a set of ticket numbers*. In fact, nothing in Storch determines anything which *corresponds to a set of ticket numbers*.

### **9.3.2. No showing that the references suggest acquiring at least one lottery ticket having the set of ticket numbers based on the total value amount**

The Examiner has not shown that the references, alone or in combination, suggest *acquiring at least one lottery ticket having the set of ticket numbers based on the total value amount*.

On pages 18 - 19 of the Final Office Action, the Examiner concedes that Roberts does not disclose such a feature, but Nilssen "shows elements that suggest" such a feature. The portions of Nilssen that purportedly suggest this feature (col. 6, lines 24 - 40) merely disclose that funds are invested, and a lottery ticket reflects a certain small fraction of this total net value.

Nilssen has nothing at all to do with *acquiring at least one lottery ticket*, much less *acquiring at least one lottery ticket having any particular ticket numbers*, much less *acquiring at least one lottery ticket having the set of ticket numbers based on the total value amount*.

### **9.3.3. No showing of a proper motivation to combine the references Group IX**

The Examiner simply has not shown a motivation in the prior art of record to modify or combine the disparate references in the way suggested by the Examiner, or in any other manner that renders the claims obvious.

In the rejection of claim 16, the Examiner has provided two motivations to combine the Storch, Roberts and Nilssen references.

First, it is asserted that one of ordinary skill in the art at the time the invention was made would have combined Roberts with Storch because “such combination would have provided means to improve counterfeit detection and / or deterrence ... (See Storch (col. 4, ll. 10 – 12)).” Final Office Action, page 19, paragraph 4.

Second, it is asserted that one of ordinary skill in the art at the time the invention was made would have combined Nilssen with Roberts because “such combination would have provided means to '[provide] ... a lottery process and system operative to increasing the average monetary return from an investment in a lottery ticket ...' (See Nilssen (Col. 1, ll. 25 - 30)).” Final Office Action, page 20, paragraph 2.

Both motivations fail for three reasons:

- (a) neither motivation would actually have prompted one to make the proposed combination;
- (b) neither combination would in any way further the proposed motivation; and
- (c) neither combination has anything to do with the embodiment of claim 16, as discussed above in Sections 9.3.1 and 9.3.2.

With respect to reason (a), the second motivation, “increasing the average monetary return from an investment in a lottery ticket”, would not cause one to seek out lottery ticket fraud prevention, much less the particular method of Roberts. In fact, apart from involving lottery tickets, there is no way in which the system of Roberts appears to fit with the investment system disclosed in Nilssen.

Further with respect to reason (b), the second combination (Roberts and Nilssen) does not further the proposed motivation of “increasing the average monetary return from an investment in a lottery ticket”. Whatever means in Roberts for determining detecting fraud would seem to be unaltered by the return-related machinations of Nilssen.

*Group IX*

With respect to reason (c), the first and second combinations (as well as any combination of the references) have nothing to do with the embodiment of claim 16. Further, as described above, any such combination would still lack several features of claim 16, and these features have significant advantages, also as explained above. Further, any such combination would not solve any the problems addressed by the embodiment of claim 16.

Thus the Examiner has not shown a motivation in the prior art of record to modify or combine the references in any manner that renders the claims of the Group obvious.

#### **9.4. The Claims of Group IX are Allowable Over the Cited References**

As described above, the Examiner has failed to provide a *prima facie* showing of obviousness. In addition, the references cannot be combined in any manner that would render the claims of the Group obvious.

##### **9.4.1. The references do not suggest *determining a total value amount corresponding to a set of ticket numbers***

It is clear that no reference of record in any way involves *determining anything corresponding to a set of ticket numbers*, much less *determining a total value amount corresponding to a set of ticket numbers*.

##### **9.4.2. The references do not suggest *acquiring at least one lottery ticket having the set of ticket numbers based on the total value amount***

It is clear that no reference of record in any way involves *acquiring at least one lottery ticket* having particular ticket numbers, much less *acquiring at least one lottery ticket having the set of ticket numbers based on the total value amount*.

In conclusion, the Examiner has not set forth a *prima facie* case of obviousness of the claims of Group IX, none of the references (alone or in combination) disclose or suggest the limitations of the claims of Group IX, and none of the references (alone or in combination) *Group IX*

possess the advantages conferred by those limitations, as discussed in detail above in Section 9.2 "Advantages of Independent Claim 16". Accordingly, for at least those reasons, the claims of Group IX are patentable in view of the cited references.

*Group IX*

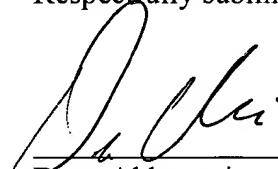
## CONCLUSION

Thus, the Examiner's rejection of the pending claims are is improper at least because the all pending claims are directed to statutory subject matter. In addition, the references, alone or in combination, do not disclose or suggest all the limitations of any claim. In addition, in the obviousness rejections the Examiner has improperly combined the references because there is no adequate reasoning or support in the prior art for making the proposed combination. Therefore, Appellants respectfully request that the Examiner's rejections be reversed.

If any issues remain, or if there are any further suggestions for expediting allowance of the present application, please contact Dean Alderucci using the information provided below.

Appellants hereby request any extension of time that may be required to make this Appeal Brief timely. Please charge any fees that may be required for this paper, or credit any overpayment, to Deposit Account No. 50-0271.

Respectfully submitted,



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July 14, 2003  
Date



## APPENDIX A

### CLEAN COPY OF CLAIMS INVOLVED IN THE APPEAL

Claims 1 – 27 are pending and appealed.

Claims 1, 11, 15, 16 and 20 – 27 are independent.

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1. A method for facilitating the purchase of fractional lottery tickets using a point-of-sale terminal, comprising:
  - determining a monetary value;
  - selecting a ticket record that includes a set of ticket numbers;
  - purchasing at least one lottery ticket based on the monetary value and the set of ticket numbers after the step of selecting; and
  - outputting the ticket numbers and a fractional lottery ticket value that is based on the monetary value.
2. The method of claim 1, in which the step of determining a monetary value comprises:
  - determining a monetary value based on an amount of change due for a purchase.
3. The method of claim 1, in which the step of selecting comprises:
  - creating the ticket record.
4. The method of claim 1, in which the step of selecting comprises:
  - selecting a ticket record randomly.
5. The method of claim 1, further comprising:

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receiving a signal indicating selected ticket numbers.

6. The method of claim 5, in which the step of selecting comprises:  
searching a plurality of ticket records to select a ticket record that indicates the selected ticket numbers.
7. The method of claim 1, further comprising:  
increasing a total value amount of the selected ticket record in accordance with the fractional lottery ticket value.
8. The method of claim 7, further comprising:  
adjusting an amount to round up based on the increased total value amount.
9. The method of claim 1, in which the step of selecting comprises:  
selecting a ticket record having an amount to round up at least as great as the fractional lottery ticket value.
10. The method of claim 1, in which the step of selecting comprises:  
determining a set of ticket records that each have an amount to round up at least as great as the fractional lottery ticket value; and  
selecting a ticket record from the set of ticket records which has a minimal amount to round up.
11. A method for facilitating the purchase of fractional lottery tickets using a point-of-sale terminal, comprising:

CLEAN COPY OF CLAIMS INVOLVED IN THE APPEAL

determining an amount of change due for a purchase;  
determining a monetary value based on the amount of change due;  
selecting a ticket record that includes a set of ticket numbers;  
purchasing at least one lottery ticket based on the value and the set of ticket numbers after the step of selecting; and  
outputting the ticket numbers and a fractional lottery ticket value that is based on the monetary value.

12. The method of claim 11, in which the step of determining a monetary value comprises:  
rounding the amount of change due to a predetermined multiple, thereby generating a rounded change amount; and  
setting the monetary value equal to the rounded change amount.

13. The method of claim 12, in which the step of rounding the amount of change due comprises:  
rounding down the amount of change due to a predetermined multiple, thereby generating a rounded-down change amount.

14. The method of claim 11, further comprising:  
outputting an offer to exchange a fractional lottery ticket for change due.

15. A method for facilitating the purchase of fractional lottery tickets using a point-of-sale terminal, comprising:

determining a monetary value;

selecting a ticket record that includes a set of ticket numbers;

purchasing at least one lottery ticket based on the value and the set of ticket numbers after the step of selecting; and

outputting the ticket numbers and a fractional lottery ticket value that is based on the monetary value;

determining a prize value of the at least one lottery ticket; and

providing a portion of the prize value based on the fractional lottery ticket value.

16. A method for facilitating the purchase of fractional lottery tickets using a point-of-sale terminal, comprising:

determining a total value amount corresponding to a set of ticket numbers; and

acquiring at least one lottery ticket having the set of ticket numbers based on the total value amount.

17. The method of claim 16, in which the step of acquiring is performed at predefined periods.

18. The method of claim 16, in which the step of acquiring is performed at a predefined time before a drawing.

19. The method of claim 16, further comprising:

determining an amount to round up based on the total value amount;

and in which the step of acquiring is performed when the amount to round up is below a predetermined value.

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20. An apparatus for facilitating the purchase of fractional lottery tickets using a point-of-sale terminal, comprising:

a storage device; and

a processor connected to the storage device,

the storage device storing a program for controlling the processor; and

the processor operative with the program to:

determine a monetary value;

select a ticket record that includes a set of ticket numbers;

purchase at least one lottery ticket based on the monetary value and the set of ticket numbers after the step of selecting; and

output the ticket numbers and a fractional lottery ticket value that is based on the monetary value.

21. A computer readable medium encoded with processing instructions for implementing a method for facilitating the purchase of fractional lottery tickets using a point-of-sale terminal, the method comprising:

determining a monetary value;

selecting a ticket record that includes a set of ticket numbers;

purchasing at least one lottery ticket based on the monetary value and the set of ticket numbers after the step of selecting; and

outputting the ticket numbers and a fractional lottery ticket value that is based on the monetary value.

CLEAN COPY OF CLAIMS INVOLVED IN THE APPEAL

22. An apparatus for facilitating the purchase of fractional lottery tickets using a point-of-sale terminal, comprising:

a storage device; and

a processor connected to the storage device,

the storage device storing a program for controlling the processor; and

the processor operative with the program to:

determine an amount of change due for a purchase;

determine a monetary value based on the amount of change due;

select a ticket record that includes a set of ticket numbers;

purchase at least one lottery ticket based on the value and the set of ticket numbers after the step of selecting; and

output the ticket numbers and a fractional lottery ticket value that is based on the monetary value.

23. A computer readable medium encoded with processing instructions for implementing a method for facilitating the purchase of fractional lottery tickets using a point-of-sale terminal, the method comprising:

determining an amount of change due for a purchase;

determining a monetary value based on the amount of change due;

selecting a ticket record that includes a set of ticket numbers;

purchasing at least one lottery ticket based on the value and the set of ticket numbers after the step of selecting; and

outputting the ticket numbers and a fractional lottery ticket value that is based on the monetary value.

24. An apparatus for facilitating the purchase of fractional lottery tickets using a point-of-sale terminal, comprising:

    a storage device; and

    a processor connected to the storage device,

    the storage device storing a program for controlling the processor; and

    the processor operative with the program to:

        determine a monetary value;

        select a ticket record that includes a set of ticket numbers;

        purchase at least one lottery ticket based on the value and the set of ticket numbers after the step of selecting; and

        output the ticket numbers and a fractional lottery ticket value that is based on the monetary value;

        determine a prize value of the at least one lottery ticket; and

        provide a portion of the prize value based on the fractional lottery ticket value.

25. A computer readable medium encoded with processing instructions for implementing a method for facilitating the purchase of fractional lottery tickets using a point-of-sale terminal, the method comprising:

    determining a monetary value;

    selecting a ticket record that includes a set of ticket numbers;

    purchasing at least one lottery ticket based on the value and the set of ticket numbers after the step of selecting; and

    outputting the ticket numbers and a fractional lottery ticket value that is based on the monetary value;

    determining a prize value of the at least one lottery ticket; and

    providing a portion of the prize value based on the fractional lottery ticket value.

26. An apparatus for facilitating the purchase of fractional lottery tickets using a point-of-sale terminal, comprising:

a storage device; and

a processor connected to the storage device,

the storage device storing a program for controlling the processor; and

the processor operative with the program to:

determine a total value amount corresponding to a set of ticket numbers; and

acquire at least one lottery ticket having the set of ticket numbers based on the total value amount.

27. A computer readable medium encoded with processing instructions for implementing a method for facilitating the purchase of fractional lottery tickets using a point-of-sale terminal, comprising:

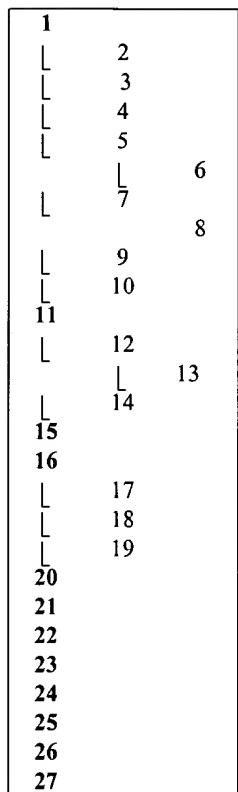
determining a total value amount corresponding to a set of ticket numbers; and

acquiring at least one lottery ticket having the set of ticket numbers based on the total value amount.

**APPENDIX B**  
**CHART SHOWING CLAIM DEPENDENCIES**

Claims 1 – 27 are pending and appealed.

Claims 1, 11, 15, 16 and 20 - 27 are independent.



*CHART SHOWING CLAIM DEPENDENCIES*